

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION IX**  
75 Hawthorne Street  
San Francisco, CA 94105-3901

**IN THE MATTER OF:**

Docket No. PWS-AOC-2017-xxxx

First Mesa Consolidated Villages, owner/operator of )  
the Polacca Public Water System, and )

Hopi Tribe,

## ADMINISTRATIVE ORDER ON CONSENT

Respondents.

PWS ID. No. 0400106

Proceedings pursuant to section 1414(g) of the federal)  
Safe Drinking Water Act, 42 U.S.C. § 300(g)-3(g). )

## I. INTRODUCTION

1. The United States Environmental Protection Agency, Region IX (“EPA”) and Respondents First Mesa Consolidated Villages and the Hopi Tribe (“Respondents”) enter into this Administrative Order on Consent (“Consent Order”) for the purpose of bringing the Polacca public water system PWS ID 0400106 (“System”), located in Polacca, Arizona into compliance with the requirements of the federal Safe Drinking Water Act (“SDWA”), 42 U.S.C. 300f *et seq.*, and its National Primary Drinking Water Regulations (“NPDWRs”) at 40 C.F.R. Part 141. The System serves approximately 2,700 persons and has 525 service connections.
2. EPA and Respondents recognize that this Consent Order was negotiated in good faith.

## II. JURISDICTION

3. EPA enters into and issues this Consent Order under the authority vested in the EPA.

Administrator by section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), which in turn has been delegated to the Director of EPA Region 9's Enforcement Division. EPA and the Respondents enter into this Consent Order voluntarily.

4. Respondents agree not to contest EPA's authority or jurisdiction to issue this Consent Order in this or in any subsequent proceeding to enforce the terms of this Consent Order. This Consent Order constitutes an enforceable agreement between the Respondents and EPA.

5. EPA has primary enforcement responsibility under section 1414 of the SDWA, 42 U.S.C. § 300g-3, to ensure that this System complies with the requirements of the SDWA.

#### **IV. DEFINITIONS**

6. "Consent Order" shall mean this document, all attachments hereto, all subsequent modifications, and all submissions required by this Consent Order and approved by EPA.

7. "Day" shall mean a calendar day unless otherwise specified. In computing a prescribed period of time, the day of the event shall not be included.

8. "Maximum Contaminant Level" ("MCL") shall mean the maximum permissible level of a contaminant in water which is delivered to any user of a public water system, as further defined at 40 C.F.R. § 141.2.

#### **V. FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

9. Respondent Hopi Tribe is a union of self-governing villages sharing common interests and working for the common welfare of all. Respondent First Mesa Consolidated Villages ("First Mesa") is one of the self-governing villages that are part of the Hopi Tribe, an "Indian Tribe" under section 104 of the Federally Recognized Indian Tribe List Act, 25 U.S.C. § 479a, and 81 Fed. Reg. 26826, 26828 (May 4, 2016), and thus a "municipality" within the meaning of section

1401(10) of the SDWA, 42 U.S.C. § 300f(10), and also a “person” within the meaning of section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 142.2.

10. The System has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents and therefore meets the definition of a “public water system” in section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and the definition of a “community water system” (“CWS”) in section 1401(15) of the SDWA, 42 U.S.C. § 300f(15), and 40 C.F.R. § 141.2.

11. The System serves approximately 2,700 persons and thus meets the definition of a “small water system” provided in 40 C.F.R. § 141.2.

12. The System’s source of drinking water is groundwater.

13. Respondent First Mesa owns and operates the System and thus meet the definition of a “supplier of water” provided in section 1401(5) of the SDWA, 42 U.S.C. § 300f(5) and 40 C.F.R. § 141.2. As a “supplier of water,” Respondent First Mesa must comply with the requirements of Part B of the SDWA, 42 U.S.C. § 300g *et seq.*, and its NPDWRs.

#### Arsenic MCL Requirements

14. Systems which exceed the arsenic MCL are required to monitor quarterly beginning in the next quarter after the violation occurred. 40 C.F.R. § 141.23(c)(7).

15. Groundwater systems are to take a minimum of one (1) sample at every sampling point. 40 C.F.R. § 141.23(a)(1).

16. The MCL for arsenic is 0.010 mg/L, or 10 parts per billion (“ppb”). 40 C.F.R. § 141.62(b).

#### Violations of Arsenic Monitoring Requirements

17. Tables 1 and 2 provide a summary of Respondent First Mesa's arsenic monitoring sampling and analytical data as submitted to EPA.

**TABLE 1 – HISTORY OF ARSENIC MONITORING RESULTS -WEST WELL**

<b>Sample Location</b>	<b>Sample Date</b>	<b>Quarter</b>	<b>Arsenic Level (ppm)</b>	<b>Running Annual Average (ppm)</b>
West Well	2012	Q2 (April-June)	0.0086	0.0142
West Well	2012	Q3 (July-Sept.)	0.015	0.0141
West Well	2012	Q3	0.0083	0.0141
West Well	2013	Q1 (Jan.-Mar.)	0.011	0.0104
West Well	2013	Q3	0.009	0.01
West Well	2015	Q3	0.017	0.017
West Well	2015	Q4 (Oct.-Dec.)	0.016	0.0165
West Well	2016	Q1	0.019	0.0173
West Well	2016	Q2	0.016	0.017

**TABLE 2 – HISTORY OF ARSENIC MONITORING RESULTS – EAST WELL**

<b>Sample Location</b>	<b>Sample Date</b>	<b>Quarter</b>	<b>Arsenic Level (ppm)</b>	<b>Running Annual Average (ppm)</b>
East Well	2012	Q2	0.019	0.02
East Well	2012	Q3	0.02	0.019
East Well	2012	Q3	0.018	0.019
East Well	2013	Q1	0.019	0.019
East Well	2013	Q3	0.017	0.018
East Well	2015	Q3	0.014	0.014
East Well	2015	Q4	0.018	0.016

East Well	2016	Q1	0.021	0.0177
East Well	2016	Q2	0.016	0.0173

18. Respondent First Mesa's failure to monitor in the fourth quarter of 2012, the second quarter of 2013, every quarter of 2014 and the first and second quarters of 2015 following violations of the Arsenic MCL, as indicated in Tables 1 and 2, violated the quarterly monitoring requirements of 40 C.F.R. § 141.23(c)(7).

#### Violations of Arsenic MCL

19. Pursuant to 40 C.F.R. § 141.23 (i)(1), compliance at a public water system conducting arsenic monitoring at a frequency greater than annually is determined by the running annual average ("RAA"). If the average at any sampling point is greater than the MCL, then the system is out of compliance. If any one sample would cause the annual average to be exceeded, then the system is out of compliance immediately. If a public water system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples actually collected.

20. Since at least the 2nd quarter of 2012, Respondent First Mesa violated the arsenic MCL of 0.010 mg/l based on the RAA of the available analytical results of arsenic sampling provided above in Tables 1 and 2.

21. Respondent First Mesa's violation of the arsenic MCL has continued into at least the second quarter of 2016, as shown in Tables 1 and 2 above.

### Violations of the Public Notice Requirements

22. 40 C.F.R. Part 141, Subpart Q, requires public water systems to provide public notice of any failure to comply with an NPDWR, including violations of an MCL or a monitoring requirement. As applicable here, 40 C.F.R. § 141.203 requires a Tier 2 public notice no later than 30 days of the System learning of an arsenic MCL violation.

23. Pursuant to 40 C.F.R. § 141.203(c), where a Tier 2 public notice is required, a system must provide the initial public notice and any repeat notices in a form and manner that is reasonably calculated to reach persons served in the required time period. A system must repeat the notice every three months as long as the violation or situation persists. 40 C.F.R. § 141.203(b)(2).

24. Community water systems are required to provide notice by mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system. 40 C.F.R. § 141.203(c)(1)(i).

25. Respondent First Mesa's violation of the arsenic MCL began in the second quarter of 2012. The violation has continually persisted from that time until at least the second quarter 2016. Respondent First Mesa has failed to post or submit Tier 2 public notice for the third quarter of 2015, the first quarter of 2016 and the second quarter of 2016.

26. Respondent First Mesa's failure to repeat the notices every three months as long as the arsenic MCL violation persists violated 40 C.F.R. § 141.203.

### **VI. COMPLIANCE PROVISIONS**

Based on the foregoing findings and pursuant to its authority under section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), Respondents agree and are hereby ORDERED to conduct the following activities:

27. **Letter of Intent:** No later than thirty (30) days of this Consent Order's Effective Date, Respondents must transmit to EPA a letter describing its intention to comply with this Consent Order and summarizing any steps already taken by Respondents to comply with this Consent Order, the SDWA, and its implementing regulations at 40 C.F.R. Part 141.

28. **Compliance Plan:** No later than sixty (60) days of this Consent Order's Effective Date, Respondents must submit to EPA for its review and approval a draft written compliance plan ("Compliance Plan") that describes in detail the steps and schedule Respondents will follow to return its System to compliance with the arsenic MCL, the arsenic monitoring requirements, and any applicable public notice requirements by the compliance deadlines set forth in this Consent Order.

29. **Compliance with the Arsenic MCL:** Upon approval by EPA, Respondent First Mesa shall implement its Compliance Plan expeditiously and achieve and demonstrate compliance with the arsenic MCL based on the running annual average no later than DATE.

30. **Continuous Compliance with the Arsenic MCL:** Following Respondent First Mesa's initial compliance with the arsenic MCL, Respondent First Mesa shall maintain continuous compliance with the arsenic MCL for all water the System serves to its customers for human consumption.

31. **Implementation of Interim Priority Actions:** Within one-hundred eighty (180) days of the Effective Date of this AOC, Respondent First Mesa shall implement (interim compliance measures) at the System.

32. **Sampling and Analysis:** Respondent First Mesa shall immediately comply with the arsenic sampling and monitoring requirements on a quarterly basis as required by 40 C.F.R.

§141.23(c)(7). In addition, Respondent First Mesa shall demonstrate its initial and continuous compliance with the arsenic MCL pursuant to its EPA-approved Compliance Plan by having its arsenic samples analyzed by an EPA-certified laboratory.

33. **Increased Arsenic Sampling and Analysis:** Respondent First Mesa shall comply with any additional and/or more frequent arsenic sampling and analysis requirements determined necessary by EPA following written notice by EPA of any such requirements.

34. **Reporting of the Arsenic Sample Results:** Respondent First Mesa shall ensure the analytical results of all its arsenic sampling, including any additional samples not required by this Consent Order that Respondent First Mesa may choose to collect, are submitted to EPA within forty-five (45) days of the arsenic sampling event.

35. **Quarterly Progress Reports:** Respondents must submit written reports to EPA that describe Respondents' progress in implementing the approved Compliance Plan during the previous quarter. The first Quarterly Progress Report is due by XX, 2017. Subsequent reports are due ten (10) days after the last day of every calendar quarter thereafter, *i.e.*, the second Quarterly Progress Report is due XX, 2017. Respondents must submit Quarterly Progress Reports until otherwise directed by EPA or the termination of this Order.

36. **Quarterly Meetings:** Respondents must convene quarterly meetings (by teleconference or at a centralized meeting location) and invite meaningful parties, including, but not limited to, the Representatives from Hopi Tribal Government, Hopi Water Resources Program, Polacca PWS, and the EPA Region 9 Enforcement Division and Office of Regional Counsel, to:

- a. Discuss the adequacy of Respondents' compliance with the Consent Order and the approved Compliance Plan;



- b. Establish any necessary managerial and governance protocols that will assist in Respondents' compliance with the Consent Order and approved Compliance Plan; and
- c. Discuss how to best promote long term and efficient drinking water compliance at the System.

The first meeting must be held at a date to be determined by Respondents in DATE 2017.

Invitations to this first meeting must be provided to meaningful parties at least thirty (30) days in advance. Subsequent meetings must be convened before the last week of the last month of every quarter thereafter. Respondents must ensure that facilities are provided to allow parties to join any meeting via teleconference.

37. **Compliance with Public Notification Requirements:** No later than thirty (30) days of this Consent Order's Effective Date, Respondent First Mesa must provide a Tier 2 public notice of its failure to conduct monitoring for arsenic, as well as its failure to meet the arsenic MCL. Respondent First Mesa must comply with the public notice requirements applicable to "community water systems," including provisions of notice by mail or other direct delivery to each customer receiving the bill and to other service connections to which water is delivered by the System. EPA templates and instruction forms for public notices are attached to this Consent Order.

38. **Delays:** If any event occurs that causes or is likely to cause delay in the achievement of any requirement or time frame specified in this Consent Order, Respondents shall notify EPA in writing, within seven (7) business days of learning of such event, of the anticipated length and cause of the delay, the measures Respondents have taken and/or to be taken to prevent or minimize the delay, and the timetable by which Respondents intend to implement these measures and achieve the requirement or meet the time frame. Respondents shall adopt all reasonable

measures to avoid or minimize delay. Submittal of the notice to EPA required by this paragraph does not extend any deadline or time frame in this Consent Order.

39. **Additional Information:** Within fourteen (14) days of any request by EPA, Respondents shall submit to EPA such additional documents and information as EPA may reasonably request to determine Respondents' compliance with this Consent Order, the approved Compliance Plan, the arsenic MCL, or any other provisions of the NPDWRs.

40. All submittals to EPA made pursuant to this Consent Order must be accompanied by the following certification signed by each Respondents' representative:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in such a manner to ensure that qualified personnel gathered and evaluated the information submitted. I certify that the information is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

41. Respondents must submit all information required under this Consent Order to:

Hillary Hecht  
SDWA/FIFRA Enforcement Section  
U.S. Environmental Protection Agency  
75 Hawthorne Street (ENF-3-3)  
San Francisco, CA 94105  
Phone: (415) 947-4266  
Fax: (415) 947-3519  
E-mail: hecht.hillary@epa.gov

## **VII. GENERAL PROVISIONS**

42. Respondents shall fully implement each item of this Consent Order and the Compliance Plan approved under this Consent Order in accordance with the schedules set forth therein.

Respondents' failure to fully implement all requirements of this Consent Order and the approved Compliance Plan in the manner and time period required shall be deemed a violation of this Consent Order.

43. Respondents' failure to comply with all of the requirements of the SDWA and 40 C.F.R. Part 141 may subject it to additional enforcement actions, including but not limited to judicial or administrative actions.

44. This Consent Order will not prohibit, prevent, or otherwise preclude EPA from taking whatever action(s) it deems appropriate to enforce the SDWA in any manner and will not prohibit, prevent, or otherwise preclude EPA from enforcing or using this Consent Order in subsequent administrative proceedings. Nothing in this Consent Order constitutes a waiver, suspension or modification of the requirements of the SDWA, or the rules and regulations promulgated thereunder, which remain in full force and effect. Issuance of this Consent Order is not an election by EPA to forgo any civil or administrative action otherwise authorized under the law.

45. Violations of any term of this Consent Order may subject each Respondent to (i) a civil judicial penalty of up to \$54,789 per day per violation for each day in which a violation occurs, as assessed by the United States District Court, under sections 1414(b) and 1414(g)(3) of the SDWA, 42 U.S.C. §§ 300g-3(g)(3), and 40 C.F.R. 19.4, or (ii) an administrative penalty of up to \$38,175 after notice and opportunity for hearing, under section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(C).

46. This Consent Order does not relieve Respondents of any responsibilities or liabilities established pursuant to any applicable local, tribal, or federal law.

47. The provisions of this Consent Order are severable. If any provision of this Consent Order is found to be unenforceable, the remaining provisions will remain in full force and effect.

48. The provisions of this Consent Order are binding upon Respondents, their officers, directors, agents, servants, authorized representatives and successors or assigns.

49. Providing false or misleading information may subject Respondents to civil or criminal enforcement, or both.

50. Respondents waive any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondents may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review under Section 1448(a), 42 U.S.C. § 300j-7(a), of the SDWA.

51. This Consent Order may be modified by written agreement of the parties.

52. Each Respondents undersigned signatory certifies to his authority to execute this Consent Order and to legally bind each Respondent to the terms of this Consent Order.

53. After one year of completing all conditions of this Consent Order, Respondents may request in writing that EPA terminate this Consent Order and such submittal shall include a discussion of why termination is appropriate. EPA shall either agree to the request and terminate this Consent Order, or reject the request and provide a written response to Respondents containing EPA's reasons for not terminating the Consent Order. EPA's decision not to terminate the Consent Order shall not foreclose Respondents' opportunity to make additional termination requests at a later date.

#### **VIII. EFFECTIVE DATE**

54. This Order shall become effective five (5) business days after signature by the EPA and will remain in effect until Respondents demonstrate compliance with the terms and conditions of this Consent Order and requests termination as set forth in Paragraph 48.

IT IS SO AGREED AND ORDERED:

**For Respondent First Mesa Consolidated Villages:**

\_\_\_\_\_ Date: \_\_\_\_\_

**For Respondent First Hopi Tribe:**

\_\_\_\_\_ Date: \_\_\_\_\_

**For U.S. Environmental Protection Agency – Region IX:**

\_\_\_\_\_ Date: \_\_\_\_\_  
Kathleen H. Johnson  
Director  
Enforcement Division  
U.S. Environmental Protection Agency – Region IX